IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.25880 OF 2007

1.Abdul Karim Telgi @ Lala @ Karim Lala
2.Abdul Wahid
3.Jacob Chackoo @ Thomas ... Petitioners

-vs-

State, rep.by
Inspector of Police,
Central Bureau of Investigation,
EOU, Chennai. ... Respondent

Petition under Section 482 of the Code of Criminal Procedure.

For petitioners : Mr.C.S.S.Pillai

For respondent : Mr.N.Chandrasekaran,
Special Public Prosecutor for CBI cases.

O R D E R

This petition has been filed to direct the respondent to cause physical production of the petitioners, who are now confined in Yerwada Central Prison, Pune, State of Maharashtra, other than by video conferencing before the Additional Special Judge for CBI Cases, Chennai, in C.C.No.35 of 2005 on necessary hearings, on an application filed by the petitioners.

2. The facts, in a nutshell, are as follows :

2.1. Petitioners/accused are facing trial before the learned Additional Special Judge for CBI Cases, Chennai, for the offences under Sections 255,258,259,420,467,468,471,474,475 IPC and 13 (1) (d) r/w. 13 (2) of the Prevention of Corruption Act. Charge sheet was laid before the said Court and PT Warrant was also issued for production of the petitioners, however, they were not produced by the jail authorities.

2.2. A petition in Criminal M.P.No.1032 of 2007 was filed before the trial Court, for production of the petitioners/accused to enable them

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to consult their counsel and to avail all the opportunities envisaged in the Constitution and the Code of Criminal Procedure, before framing charges.

2.3. It was contended by the learned counsel for the petitioners before the trial Court that without production of the accused in spite of PT Warrant, the Court proceedings could not be held and that the extension of remand is against law; the accused are in Yerwada Jail, who are not in a position to consult their advocates for handing over the charge sheet and relevant documents and it is in violation of constitutional safeguards provided by Articles 21 and 22 of the Constitution; the records under Section 207 Cr.P.C. have not been furnished to the accused; the presence of the accused before the Court is very much essential, since voluminous documents are available to be scrutinized by the counsel; consultation with lawyers is a privileged one and if the Court proceedings are held by video conferencing, the rights of the parties would be endangered.

2.4. The above said contentions were controverted to by the respondent, stating that Section 273 Cr.P.C. does not deal with the production of the accused nor would enable them to consult their counsel; there is no provision in Cr.P.C. for production of the accused before the Court for the purpose of consulting their counsel; against the first petitioner, there are 26 cases across the country in various States; second petitioner is facing 5 cases and third petitioner has to appear for 7 cases before various Courts in India; it is impossible to conduct all the cases by the physical production of the accused; the law of the land also is not in favour of the accused; the statutory requirement under Section 207 Cr.P.C. has duly been complied with; counsel for the petitioners contacted the petitioners in prison on 14.07.2007 and it was informed to the Court on 17.07.2007 and, hence, the request of the petitioners could not be entertained.

2.5. After considering the rival submissions of both sides, following the principles laid down by the Hon'ble Supreme Court, the learned Additional Special Judge for CBI Cases turned down the request of the petitioners, by dismissing the petition. However, a direction was issued by the said Court to Yerwada Jail authorities to allow the petitioners to consult their lawyer once in a week on Sunday on the choice of the petitioners or the counsel for one hour for each accused separately and the said direction would be in force from the date of order, namely, 02.08.2007, till the disposal of the case in C.C.No.35 of 2005, in which the petitioners are facing trial.

3. Learned counsel for the petitioners would strenuously contend that without the production of the petitioners/accused before the Court, no effective trial shall be conducted by the Court and by their non-production, they are losing the right of consulting their advocates with reference to the records relied upon by the prosecution.

4. Conversely, the learned Special Public Prosecutor for CBI Cases would contend that the petitioners are facing numerous trials before

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the Courts in various States across the country and it is impracticable for the authorities to produce them for each and every case in the Court in various States, in which case, manpower and money power will be miserably wasted. It is his further contention that one cannot expect the contingencies of the transit of the accused from Yerwada Jail to various Courts; the travel may deteriorate their health and that their safety would also be at risk. It is also stated that on security point of view also, their production before the Court is not at all appreciable and the conduct of a criminal trial has been recognised by the Apex Court.

5. It is in order of the learned Additional Special Judge that the Hon'ble Supreme Court is in seizin of the matter and already suitable directions were issued in Writ Petition (Civil 522 of 2003), for appointing Nodal Officers by the States of Karnataka and Maharashtra, to implement Video Conferencing.

6. The crux of the charge against the petitioners is that they entered into a criminal conspiracy to sell counterfeit stamp papers in the State of Tamil Nadu and other States.

7. It is to be mentioned here that before the trial Court, the fourth accused, by name, Sarfaraz Nawaz filed an application, pleading guilty.

8. The main stay of the learned counsel for the petitioners is that the statutory provisions have to be followed by the Courts in the trial of criminal case proceedings. He vehemently argues that the Hon'ble Apex Court, in the case of State of Maharashtra v. Dr.Praful B.Desai, 2003 Supreme Court Cases (Cri) 815 = 2003 CRI.L.J.2033, has dealt with only the recording of evidence of witnesses through video conferencing system and the said principle is not applicable to the present case, as, by seeing the accused in the screen, the criminal court proceedings could not be effective. The relevant portion of the said decision is culled out thus :

> "19....Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e., in your presence. In fact, he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video-conferencing, both parties are in the presence of each other. The submissions of the respondents' counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video-conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet

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> the requirements of Section 273 of the Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law."

9. In the above said decision, it was also observed that the recording of evidence by video-conferencing also satisfies the object of Section 273; that evidence be recorded in the presence of the accused and the accused and his pleader can see the witness as clearly as if the witness was actually sitting before them and, that, in fact, the accused may be able to see the witnesses better than he may have been able to, if he was sitting in the dock in a crowded courtroom and that they can observe his or her demeanour.

10. The above said observations would clear the doubt in the minds of the accused. While video conferencing system is employed for the trial proceedings, the accused in the jail would be seeing the demeanour of the witnesses and their manner of deposing before the Court and simultaneously it is possible for the individuals, who are present in the Court, namely, the Presiding Officer, the witnesses and the counsel, to see the accused in the screen and observe them.

11. The further contention of the learned counsel for the petitioners is that if the accused are unable to witness the process of rendering oral accounts by the witnesses, the requirements under Section 273 Cr.P.C. would be defeated. He also cites another decision of the Apex Court in Sakshi v. Union of India and Others, 2004 Supreme Court Cases (Cri) 1645, the operative portion of which goes thus :

> "31. The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C.merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video-conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court in State of Maharashtra v. Dr.Praful B.Desai, (2003) 4 SCC 601. There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties."

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12. At this juncture, it is profitable to furnish Section 273 Cr.P.C., which reads as under :

> "273. Evidence to be taken in presence of accused.- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader."

13. Section 267 Cr.P.C. enumerates the power of the Court to require attendance of prisoners, which goes thus :

> "267.Power to require attendance of prisoners.- (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court, -
>
> (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or
>
> (b) that it is necessary for the ends of justice to examine such person as a witness,
>
> the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.
>
> (2) x x x x
>
> (3) x x x x"

14. As far as Section 273 Cr.P.C. is concerned, the statute requires the presence of the accused at the time of recording or receiving evidence by the Court. So, it is stoutly contended by the learned counsel for the petitioners that the personal appearance of the accused is inevitable.

15. Repelling the above said argument, the learned Special Public Prosecutor for the respondent would place his argument on the strength of the decision of the Supreme Court in State of Maharashtra v. Dr.Praful B.Desai, referred to supra, in which it is held that in video-conferencing, both parties are in presence of each other and hence it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the 'presence' of the accused and would thus fully meet the requirements of S.273 and that recording of such evidence would be as per

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'procedure' established by law.

16. The learned counsel Special Public Prosecutor also placed much reliance upon another decision of the Hon'ble Apex Court in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, 2005 CRI.L.J.1441, in which it was held that the fundamental right of an under-trial prisoner under Article 21 of the Constitution is not absolute; his right of visitations as also other rights are provided in the Jail Manual; the respondent, as an under-trial prisoner, was bound to maintain the internal discipline of the jail; such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable restrictions on such right and that the provisions of the Bihar Jail Manual or other relevant statutes having not been declared unconstitutional, the respondent was bound to abide by such statutory rules. The above said decision also formulated the guidelines to be followed, which are as follows :

> "45. We also direct that the trial of the case in Patna shall continue without the presence of the appellant by the Court dispensing such presence and to the extent possible shall be conducted with the aid of video conferencing. However, in the event of the respondent making any application for his transfer for sole purpose of being present during the recording of the statement of any particular witness, same will be considered by the learned Sessions Judge on its merit and if he thinks it appropriate, he may direct the authorities of Tihar Jail to produce the accused before him for that limited purpose. This, however, will be in a rare and important situation only and if such transfer order is made the respondent shall be taken from Tihar Jail to the Court concerned and if need be detained in appropriate jail at the place of trial and under the custody and charge of the police to be specifically deputed by the authorities of Tihar Jail who shall bear in mind the factual situation in which the respondent has been transferred from Patna to Delhi."

17. The Hon'ble Supreme Court was of the firm view that the fundamental right available to an under-trial prisoner under Article 21 is not an absolute one, which is circumscribed by the rules and regulations in the Prison Manual of respective States. Applying those principles to the case on hand, it has to be held herein that even though the provision for personal appearance of the accused is incorporated in the statutes, the right of the accused, being not absolute, using video conferencing system could not be held to be a violation of the provisions.

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18. Learned counsel for the petitioners reiterates his contention, stating that the intent of the legislature has to be respected and following it perfectly is legally expected and that though a law declared by the Supreme Court is binding, the High Court may follow it subject to the available facts and circumstances of each case. In support of his argument, the learned counsel relied upon the following decisions of the Supreme Court:

(i) The Commissioner of Sales Tax v. M/s.Parson Tools and Plants, 1975 (4) Supreme Court Cases 22, in which it was observed as follows :

"The Will of the Legislature is the supreme law of the land, and demands perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, the will of the law."

(ii) Delhi Administration (Now NCT of Delhi) v. Manohar Lal, 2002 Supreme Court Cases (Cri) 1670, wherein it was held as follows :

> "The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by the Supreme Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them."

19. The bottom line contention of the learned counsel for the petitioners is that considering the facts and circumstances of this particular case, the Court may direct physical presence of the petitioners/accused before the Court, which is absolutely necessary.

20. I have heard both the parties with rapt attention and also gone through the decisions of the Hon'ble Supreme Court in this regard.

21. I feel, a practicable way has to be paved for the Special Court for conduct of the proceedings in accordance with law. Though it is stated on behalf of the petitioners that the principles laid down by the Apex Court need not be applied mechanically to a particular case, I am of the considered view, that the peculiar facts and circumstances of this case warrant for adopting the services of video conferencing system, in order to render justice to the parties. Such procedure would avoid strain of the accused persons in undergoing the ordeal of travel to appear before the Court; reduce manpower, energy and monetary loss to the Government; safeguard the safety of the prisoners and ensure proper conduct of the Court proceedings.

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22. As observed by the Hon'ble Apex Court in the case of Kalyan Chandra Sekar, referred to above, I hold that the presence of the accused in this case has to be dispensed with, with the aid of video conferencing, and, if the petitioners/accused prefer any application before the trial Court as to their presence at the time of recording of statement of any particular witness, the said Court shall pass orders on merits. In other words, the trial of the case at Chennai shall continue without the presence of the petitioners by the Court, dispensing such presence, and, to the extent possible, shall be conducted with the aid of video conferencing.

23. Petition is dismissed with the above observations. Consequently, the connected Criminal M.P.No.1 of 2007 also stands dismissed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1.Inspector of Police,
Central Bureau of Investigation,
EOU, Chennai.

2.The Public Prosecutor,
High Court,
Madras.

+ 1 cc to Mr.C.S.S.Pillai Advocate SR.NO.58254

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